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THE

CONSTITUTION

OF

THE UNIVERSITY AT CAMBRIDGE,

WITH AN

APPENDIX.

Harvard university

CAMBRIDGE :

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CONSTITUTION.

I.

The act establishing the Overseers of Harvard College.

At a General Court held at Boston in the year 1642.

WHEREAS, through the good hand of God upon us, there is a College founded in Cambridge, in the county of Middlesex, called HARVARD COLLEGE, for the encouragement whereof this Court has given the sum of four hundred pounds, and also the revenue of the ferry betwixt Charlestown and Boston, and that the well ordering and managing of the said College is of great concernment,

It is therefore ordered by this Court, and the authority thereof, that the Governor and Deputy Governor for the time being, and all the Magistrates of this jurisdiction, together with the teaching Elders of the six next adjoining towns, viz. Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, and the President of the said College for the time being, shall, from time to time, have full power and authority to make and establish all such orders, statutes, and constitutions, as they shall see necessary for the instituting, guiding, and furthering of the said College, and the several members thereof, from time to time, in piety, morality, and learning: As also to dispose, order, and manage to the use and behoof of the said College, and the members thereof, all gifts, legacies, bequeaths, revenues, lands, and donations, as either

have been, are, or shall be conferred, bestowed, or any ways shall fall, or come to the said College.

And whereas it may come to pass, that many of the said Magistrates and said Elders may be absent, or otherwise employed about other weighty affairs, when the said College may need their present help and counsel—It is therefore ordered, that the greater number of Magistrates and Elders, which shall be present, with the President, shall have the power of the whole. Provided that if any constitution, order, or orders, by them made, shall be found hurtful to the said College, or the members thereof, or to the weal-public, then, upon appeal of the party, or parties grieved, unto the company of Overseers first mentioned, they shall repeal the said order, or orders, if they shall see cause, at their next meeting, or stand accountable thereof to the next General Court.

[Taken from the old colony laws, printed 1675. Title College, p. 29. Vide General Court records, vol. ii. p. 24.]

II.

The Charter of the President and Fellows of Harvard College, under the seal of the Colony of Massachusetts Bay, and bearing date May 31st A. D. 1650.

Whereas, through the good hand of God, many well devoted persons have been, and daily are moved, and stirred up, to give and bestow, sundry gifts, legacies, lands, and revenues for the advancement of all good literature, arts, and sciences in Harvard College, in Cambridge in the County of Middlesex, and to the maintenance of the President and Fellows, and for all accommodations of buildings, and all other necessary provisions, that may conduce to the education of the English and Indian youth of this country, in knowledge and godliness.

It is therefore ordered, and enacted by this Court, and the authority thereof, that for the furthering of so good a work and for the purposes aforesaid, from henceforth that the said College, in Cambridge in Middlesex, in New England, shall be a corporation, consisting of seven persons, to wit, a President, five Fellows, and a Treasurer or Bursar : and that Henry Dunster shall be the first President, Samuel Mather, Samuel Danforth, Masters of Art, Jonathan Mitchell, Comfort Starr, and Samuel Eaton, Bachelors of Art, shall be the five Fellows, and Thomas Danforth to be present Treasurer, all of them being inhabitants in the Bay, and shall be the first seven persons of which the said Corporation shall consist : and that the said seven persons, or the greater number of them, procuring the presence of the Overseers of the College, and by their counsel and consent, shall have power, and are hereby authorised, at any time or times, to elect a new President, Fellows or Treasurer, so oft, and from time to time, as any of the said person or persons shall die, or be removed, which said President and Fellows, for the time being, shall forever hereafter, in name and fact, be one body politic and corporate in law, to all intents and purposes ; and shall have perpetual succession ; and shall be called by the name of President and Fellows of Harvard College, and shall, from time to time, be eligible as aforesaid. And by that name they, and their successors, shall and may purchase and acquire to themselves, or take and receive upon free-gift and donation, any lands, tenements, or hereditaments, within this jurisdiction of the Massachusetts, not exceeding the value of five hundred pounds per annum, and any goods and sums of money whatsoever, to the use and behoof of the said President, Fellows, and scholars of the said College : and also may sue and plead, or be su-

ed and impleaded by the name aforesaid, in all Courts and places of judicature, within the jurisdiction aforesaid.

And that the said President, with any three of the Fellows, shall have power, and are hereby authorised, when they shall think fit, to make and appoint a common seal, for the use of the said Corporation. And the President and Fellows, or the major part of them, from time to time, may meet and choose such officers and servants for the College, and make such allowance to them, and them also to remove, and after death, or removal, to choose such others, and to make, from time to time, such orders and by-laws, for the better ordering, and carrying on the work of the College, as they shall think fit. Provided, the said orders be allowed by the Overseers. And also, that the President and Fellows, or major part of them with the Treasurer, shall have power to make conclusive bargains for lands and tenements, to be purchased by the said Corporation, for valuable considerations.

And for the better ordering of the government of the said College and Corporation, Be it enacted by the authority aforesaid, that the President, and three more of the Fellows, shall and may, from time to time, upon due warning or notice given by the President to the rest, hold a meeting, for the debating and concluding of affairs concerning the profits and revenues of any lands and disposing of their goods, (provided that all the said disposings be according to the will of the donors :) and for direction in all emergent occasions ; execution of all orders and by-laws ; and for the procuring of a general meeting of all the Overseers and Society, in great and difficult cases ; and in cases of non-agreement ; in all which cases aforesaid, the conclusion shall be made by the ma-

for part, the said President having a casting voice, the Overseers consenting thereunto. And that all the aforesaid transactions shall tend to, and for the use and behoof of the President, Fellows, scholars and officers of the said College, and for all accommodations of buildings, books, and all other necessary provisions, and furnishings, as may be for the advancement and education of youth, in all manner of good literature, arts, and sciences. And further be it ordered by this Court, and the authority thereof, that all the lands, tenements, or hereditaments, houses, or revenues, within this jurisdiction, to the aforesaid President or College appertaining, not exceeding the value of five hundred pounds per annum, shall, from henceforth, be freed from all civil impositions, taxes, and rates; all goods to the said Corporation, or to any scholars thereof appertaining, shall be exempted from all manner of toll, customs, and excise whatsoever. And that the said President, Fellows, and scholars, together with the servants, and other necessary officers to the said President, or College appertaining, not exceeding ten, viz. three to the President, and seven to the College belonging, shall be exempted from all personal civil offices, military exercises, or services, watchings, and wardings: and such of their estates, not exceeding one hundred pounds a man, shall be free from all country taxes, or rates whatsoever, and none others.

In witness whereof, the Court hath caused the seal of the colony to be hereunto affixed. Dated the one and thirtieth day of the third month, called May, Anno 1650.



THOMAS DUDLEY, Gov.

[A copy of the original engrossed on parchment, under the signature of Governor Dudley, with the colony seal appendant, and in the custody of the President of Harvard College.]

III.

An Appendix to the College Charter, granted by an act of the General Court of the colony, passed Anno 1657.

At a General Court held at Boston the 14th of Oct. 1657.

IN answer to certain proposals, presented to this Court by the Overseers of Harvard College, as an appendix to the College Charter it is ordered, The Corporation shall have power, from time to time, to make such orders and by-laws, for the better ordering, and carrying on of the work of the College, as they shall see cause, without dependence upon the consent of the Overseers foregoing. Provided always, that the Corporation shall be responsible unto, and those orders and by-laws shall be alterable by the Overseers according to their discretion.

And when the Corporation shall hold a meeting for agreeing with College servants; for making of orders and by-laws; for debating and concluding of affairs, concerning the profits and revenues of any lands, or gifts, and the disposing thereof, (provided that all the said disposals be according to the will of the donors); for managing of all emergent occasions, for the procuring of a general meeting of the Overseers and Society, in great and difficult cases, and in cases of non-agreement; and for all other College affairs to them pertaining—in all these cases the conclusion shall be valid, being made by the major part of the Corporation, the President having a casting vote. Provided always, that in these things also, they be responsible to the Overseers, as aforesaid.

And in case the Corporation shall see cause to call a meeting of the Overseers, or the Overseers shall see good to meet of themselves, it shall be sufficient unto the validity of College acts, that notice be given to the Overseers, in the six towns mentioned in the printed law, Anno

1642, when the rest of the Overseers, by reason of the remoteness of their habitations, cannot conveniently be acquainted therewith.

IV.

The articles of the constitution of the Commonwealth of Massachusetts, confirming, and securing to Harvard College, the perpetual possession, and enjoyment of all its estates, rights, powers, and privileges.

CHAPTER V.

SECT. 1.

The University.

Art. 1. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty six, laid the foundation of Harvard College, in which University, many persons of great eminence have, by the blessing of God, been initiated into those arts and sciences, which qualified them for public employments, both in church and state: and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, and the great benefit of this, and the other United States of America—It is declared, that the President and Fellows of Harvard College in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are intitled to have, hold, use, exercise and enjoy: And the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

Art. 2. And whereas there have been, at sundry

times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies, and conveyances, heretofore made, either to Harvard College in Cambridge in New England, or to the President and Fellows of Harvard College, or to the said College by some other description, under several charters successively : It is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard College, and to their successors in the capacity aforesaid, according to the true intent and meaning of the donor, or donors, grantor or grantors, devisor or devisors.

Art. 3. And whereas by an act of the General Court of the colony of Massachusetts Bay, passed in the year one thousand six hundred and forty two, the Governor and Deputy Governor for the time being, and all the magistrates of that jurisdiction were, with the President, and a number of the clergy in the said act described, constituted the Overseers of Harvard College : And it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said Governor, Deputy Governor and magistrates ; It is declared, that the Governor, Lieut. Governor, Council, and Senate of this Commonwealth are, and shall be deemed their successors ; who, with the President of Harvard College for the time being, together with the ministers of the congregational churches, in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury and Dorchester, mentioned in the said act, shall be, and hereby are vested, with all the powers and authority belonging, or in any way appertaining to the Overseers of Harvard College. Provided, that nothing herein shall be construed to prevent the legislature of this Commonwealth from making such alterations in the government of the said University,

as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner, as might have been done by the legislature of the late province of Massachusetts Bay.

V.

*The Statute of the Commonwealth, Anno 1809. ch. 113. entitled an
“ Act to alter and amend the Constitution of the Board of O-
“ verseers of Harvard College.”*

Whereas the members of the Board of Overseers of Harvard College, as heretofore constituted, cannot conveniently nor constantly attend to the diligent discharge of the duties enjoined on it :

Sect. 1. Be it therefore enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That the Governor, Lieut. Governor, Counsellors, President of the Senate, and Speaker of the House of Representatives of the Commonwealth, and the President of Harvard College for the time being, with fifteen ministers of congregational churches, and fifteen laymen, all inhabitants within the state, to be elected as is herein after mentioned, shall forever hereafter constitute the Board of Overseers of Harvard College ; they, or the major part of them, present at any legal meeting, to exercise and enjoy all the rights, powers and privileges, and to be subject to all the duties of the existing Board of Overseers of Harvard College : Provided however, that all the ministers of congregational churches who are members of that Board shall remain members of the Board of Overseers established by this act, so long as they shall continue ministers respectively of their congregational churches, and no longer.

Sect. 2. Be it further enacted, That as soon as conveniently may be, after this act shall be in force, the

present Secretary of the Board of Overseers, or, if that office be vacant, the President, or a major part of the Fellows of Harvard College, shall call a meeting of the Overseers of Harvard College, to be holden at some suitable time and place, for electing fifteen laymen, inhabitants of the state, to be members of the Board of Overseers ; the said meeting to be notified by publishing the time and place of holding the same, in each of the public newspapers printed in Boston, ten days at the least before the time of holding the same ; and the said elections to be made by ballot, by the major part of the Overseers present : And all persons who then, if this act had not been in force, would have been members of the Board of Overseers of Harvard College, shall have right to meet and vote in the said elections.

Sect. 3. Be it further enacted, That the Board of Overseers, as constituted by this act, may, at any legal meeting, choose by a majority of votes, a Secretary, when that office shall be vacant, who shall be under oath truly to record all the votes and proceedings of the Board, and faithfully to discharge all the duties of his office ; and the said Board may, at any legal meeting, by a majority of votes, determine from time to time, when and in what manner its meetings shall be held, called and notified ; and at any legal meeting of the said Board, the Governor, if present, shall preside ; if not, the Lieutenant Governor, if present, shall preside ; in their absence, the oldest member of the Council present shall preside ; if they also be absent, the President of the Senate shall preside, if present ; but in his absence also, the Speaker of the House of Representatives shall preside ; and if neither of them be present, the greater part of the Overseers present at such meeting shall choose a President pro tempore, and until one of the officers aforesaid shall be present: Pro-

vided nevertheless, that the Secretary of the Overseers shall have power to call a meeting of the said Board, at such times as he shall be thereto requested by the President and Fellows of Harvard College, such meeting to be notified as the said Board shall direct.

Sect. 4. Be it further enacted, That when any minister of any congregational church, being a member of the said Board, shall cease to have the ministerial relation he now has, or may have had at the time of his election; or when any member of the elective part of the said Board, shall remove out of the state, the place of such minister or member shall thereupon become vacant. And the said Board may at any legal meeting, by a vote of the greater number present, remove from his place any member of the elective part of the said Board, who shall neglect to attend the meetings thereof, without reasonable excuse, when duly notified, or who by his immoral conduct shall have rendered himself unworthy of holding his place; but before any vote shall pass to remove any member, he shall have reasonable notice, and a fit opportunity to be heard in his defence.

Sect. 5. Be it further enacted, That for establishing a perpetual succession in the elective part of the said Board, whenever a vacancy shall happen therein, by death, resignation, or otherwise, the Overseers may, at a legal meeting, by a majority of the votes present, fill up such vacancy, by electing therefor some suitable person, who shall be an inhabitant of the state. Provided however, that no minister of any congregational church shall be so elected, when there are fifteen ministers of congregational churches members of the elective part of the said Board; nor shall any layman be so elected, when there are fifteen laymen members of the elective part of the said Board; but in all cases, when there are fifteen ministers

and fifteen laymen members of the elective part of the said Board, there shall not be deemed to be any vacancy therein.

Sect. 6. Be it further enacted, That this act shall be in force when the Overseers of Harvard College, as heretofore constituted, and the President and Fellows of Harvard College shall agree to accept the provisions in this act contained.

In the House of Representatives, March 5, 1810,

This bill, having had three several readings, passed to be enacted,

TIMOTHY BIGELOW, *Speaker.*

In Senate, March 6, 1810,

This bill, having had two several readings, passed to be enacted,

H. G. OTIS, *President.*

March 6, 1810,

Approved, C. GORE.

At a meeting of the President and Fellows of Harvard College in Boston, March 16, 1810,

The President, having laid before the President and Fellows of Harvard College an exemplification, under the great seal of the Commonwealth, of a certain act passed by the General Court at the last session thereof, entitled, "An act to alter and amend the constitution of the board of Overseers of Harvard College," in the sixth section of which act, it is enacted as follows: "This act shall be in force when the Overseers of Harvard College, as heretofore constituted, and the President and Fellows of Harvard College shall agree to accept the provisions in this act contained;" and the said act having been read, and the provisions therein duly considered, it is unanimously voted,

That the President and Fellows of Harvard College

do agree to accept the provisions in the said act contained ; and it is further voted,

That the President be requested to lay the aforesaid vote before the Honorable and Reverend the Board of Overseers of Harvard College.

Attest, SAMUEL WEBBER, *President.*

At a meeting of the Overseers of Harvard College, April 12, 1810, the proceeding of the Corporation and act of the legislature above stated being laid before the Board, the Board voted to accept the provisions in said act contained:

JOHN LATHROP, *Sec'y.*

APPENDIX.

THE foundation of Harvard college was laid by the general court of the colony of Massachusetts Bay in September 1636—when the “ court agreed to give £400 towards a school or college; “ the next court to appoint where and what building.” In the year 1637, the college was ordered to be erected at Newtown, and twelve gentlemen were appointed to take order for that college. In May 1638, 9, the name of Newtown was changed to Cambridge, and in March 1638, it was ordered that the college to be built at Cambridge be called Harvard college.

In August 1640, “ at a meeting of the magistrates and elders “ at Boston, the Rev. Henry Dunster was by them invited to accept the place of President of the college, which he accordingly accepted, and to him,” by the same persons, “ was committed “ the care and trust of finishing the college buildings and his own “ lodgings, and the custody of the college stock and such donations as might be added to the increase thereof;” so that in fact President Dunster executed the duties of a treasurer of the college, which duties the year before had been assigned by the general court to the Rev. Mr. Shepherd. As the election of President Dunster was previous to the establishment of the board of overseers; the appointing him to that office and to the discharge of those duties, by the magistrates and elders, seems to have been without any legal authority.

In the constitution of the board of overseers, no authority was given to them to appoint a treasurer of the college; but they were empowered to “ dispose, order, and manage all gifts, legacies, bequests, revenues, lands, and donations, which had been “ or afterwards should be conferred, bestowed, or any way should “ fall or come to the said college.” In the charter of the corporation, or President and Fellows, express provision is made for a treasurer of the college. But by this charter no acts of the cor-

poration were valid until consented to by the overseers. The inconveniences resulting to the college from a corporation with powers thus limited were so great, that the President and Fellows do not appear to have exercised their corporate powers, nor the treasurer to have entered on his office, until after the appendix to the college charter granted in the year 1657. Previous to the granting of this appendix, President Dunster put into the hands of the overseers his resignation, which was addressed to the general court of the colony of Massachusetts Bay—and of which a copy is here inserted.

*“ The President’s resignation exhibited to the General Court
“ held at Boston, June 10, 1654.*

“ To the worshipful and honored RICHARD BELLINGHAM, Esq.
“ Governor of the Massachusetts Colony, with the rest of the
“ honored Assistants and Deputies in General Court at Bos-
“ ton now assembled.

“ *Worshipful and honored Gentlemen and faithful Trustees of
“ your Colony,*

“ WHEREAS now at last I understand that the call or invita-
“ tion I had unto my present business in the College, together with
“ the promises, encouragements, and allurements thereto on Aug.
“ 27, 1640, by about ten Gentlemen, whom I then understood to
“ be Magistrates with Mr. DUDLEY, then Governor, and about
“ sixteen Ministers or Elders, whom I also then took to be and
“ still from my heart do think to continue the persons that seri-
“ ously and cordially consult for the welfare of the colony, and
“ that especially in the liberal and learned education of the
“ youth of the country; yet seeing that now I fully understand
“ that the said persons had no authority to do any such act or acts
“ as to give such a call, or to promise any such encouragements
“ or allurements; and besides, seeing there be such laws, or-
“ ders or injunctions in part already imposed on the place as be
“ destructive thereto, and that our former laws and orders, by
“ which we have managed our place, be declared illegal and null,
“ so that all possible means of managing our trust to the best end
“ is so either made void, interfering and entangled, or at least
“ questionable and offensive, that whatsoever we do is to myself
“ and the Fellows* unwarrantable and not secure, and with some

* From the commencement of the college and for more than half a century the tutors, who with the president conducted the instruction and

“principles tending to dissolution. To mention no further grounds.

“Therefore I here resign up the place wherein hitherto I have laboured with all my heart, (blessed be the Lord who gave it) serving you and yours. And henceforth (that you in the interim may be provided) I shall be willing to do the best I can for some few weeks or months to continue the work, acting according to the orders prescribed to us ; if the society in the interim fall not to pieces in our hands ; and what advice for the present or for the future I can give for the public good, in this behalf, with all readiness of mind I shall do it, and daily by the grace of our Lord Jesus Christ, pray the Lord to help and counsel us all, in whom I rest.

“Yours faithfully to serve,

“HENRY DUNSTER.”

From this resignation of President Dunster it appears that he was satisfied, that he was originally introduced to the office by persons, not duly authorised ; and it also appears that in his view the limitation of the powers in the charter of incorporation would defeat the object of the charter, and prove destructive to the college.

The resignation of the president being by the overseers presented to the court then in session, they authorised the overseers to accept it ; and ordered that the said board of overseers should have the care and trust of the college stock. In this year the court also ordered, that “Mr. Whiting and Mr. Cobbet, pastors of Dedham and Lynn, and Mr. Norton, an unsettled teacher in Boston, should be overseers, and join with the rest of the overseers in the work of the college.” The order respecting the college property seems to have been required by the circumstances then existing ; the president, to whom this stock had been entrusted was out of office, and the President and Fellows of the corporation not having exercised the powers contained in their charter of incorporation, there was no treasurer of the college.

Such was the difficulty attending the attempt to execute powers so restrained as those in the charter of 1650—that in October 1657, upon the application of the overseers, the appendix to the immediate government, were called “Fellows of the college.” After the establishment of the corporation, there were “Fellows of the House or college” and “resident Fellows,” and “Fellows of the corporation.” This name is now and has been for more than sixty years confined to the members of the corporation.

college charter was established, by which the orders and by-laws of the President and Fellows had immediate force and effect; they being responsible for the same to the board of overseers.

Afterwards the general court of the colony of Massachusetts Bay appear to have intended a new college charter with much larger powers, including a measure of civil jurisdiction; and passed the ordinance of 1672—a copy of which here follows.

“ At the second session of the General Court for elections held at Boston, 8th of October, 1672, on their adjournment.

“ Whereas by the good hand of God, there has been erected and continued a College in Cambridge in the county of Middlesex, called by the name of Harvard College, and that by an Instrument or Charter, dated the 31st of May in the year 1650, the President and Fellows thereof were established to be one body corporate by the authority of this Court : And whereas several gifts and donations have been made, and are still making by many well devoted persons, inhabitants of this country, as also strangers, for the maintenance of the Governors and the government thereof, and for all the accommodations of the Scholars thereof, in books, buildings, lectures, scholarships, and all other necessary and fitting provisions, that may conduce to the education of English and Indian youth. Now for the perpetuation and further advancement of so good a work, and for the better encouragement of all persons therein concerned, or to be concerned, it is ordered and enacted by this Court and the authority thereof, that Leonard Hoare, Doctor in Physic, be the present President of said Harvard College, Mr. Samuel Danforth, Fellow of the said College, Mr. Urian Oakes, Pastor of the Church of Cambridge, Mr. Thomas Shepherd, teacher of the Church of Charlestown, Mr. Joseph Brown and Mr. John Richardson, Masters of Art, be the Fellows, and Mr. John Richards the Treasurer of the said College and Corporation for the time being; and that the President, Fellows, and Treasurer of the said College, or the Fellows alone, when there is no President established; and their successors from time to time be the immediate Governors thereof, and shall in name and fact forever hereafter be one body politic and corporate in law, to all intents and purposes, and shall have perpetual succession, having power and authority by these presents, (procuring a meeting of the Overseers, and by their council and consent) to elect successors into the places of any one or more of them which shall be by death or

removal made vacant :—Be it also hereby authorised and enacted, that the said Corporation and their successors shall have the power of constituting, and again at their pleasure removing all inferior officers to the said Society appertaining—and all the next and immediate government of every member of the said Society according to such orders and laws as are or shall be established by the said Corporation ; the Overseers of the said College allowing or not contradicting the said laws, upon notice of them given to them at their next meeting.—And also the said Corporation and their successors may purchase and acquire to themselves, or take and receive upon free gift any lands, tenements, hereditaments, annuities, services, goods, monies, or other emoluments whatsoever, or from whomsoever, and (observing strictly the will of the donors) dispose of the same to the use and behoof of the said College or any members thereof ; and the President may warn a general meeting of the said Corporation for debating any of the affairs aforesaid.—In all which cases the conclusion shall be made by the major part present, the President having a casting voice. And that the said Corporation with their distinct Treasurer (if any such be chosen) by the name of the President, Fellows and Treasurer of Harvard College, may sue and plead, or be sued or impleaded in all Courts or places of judicature within this jurisdiction of the Massachusetts Colony, to all intents and purposes in law and with effect, as may any private person or body incorporate; only the estate to the Corporation belonging, and not that which belongs proper to any member of the said Corporation, being liable to such impleadments : also that the said Corporation or any three of them, the President being one, in all crimes by the laws of this country punishable by one magistrate, shall have the full power of scolding, fining, or otherwise correcting, all inferior officers or members to the said Society belonging, as the laws of the country provide in such cases, or the laws of the College not repugnant unto them : and for that end any of the said Corporation shall, and hereby have power personally with such aid of the Society as they shall think meet, taking the constable along with them, to enter into any houses licensed for public entertainment, where they shall be informed, or may be suspicious of any enormities to be plotting or acting by any members of their Society ; and all constables and all other inferior civil officers in that place are hereby authorised and commanded to be readily aiding and assisting to them or

any of them in the premises. Neither shall any person or persons legally expelled the College, abide above ten days in the township of Cambridge, unless their parents live in the said township. And be it also ordered and enacted by this Court and the authority thereof—that all the lands, tenements, hereditaments or annuities within this jurisdiction, to the said Corporation appertaining, not exceeding the value of five hundred pounds per annum, shall be henceforth freed from all ordinary civil impositions, taxes, and rates, and all goods to the said Corporation, or to any scholars thereof appertaining, shall be exempted from all manner of toll, customs and excise whatsoever, except in cases of war, or extraordinary exigencies of the country. And moreover that the said President, Fellows and scholars, together with their menial servants, and other necessary officers, (not exceeding the number of ten) shall be utterly exempted from all personal and civil offices, military exercises, watchings and wardings, or the like public services: And the personal estates of the said Corporation and their officers (not exceeding one hundred pounds a man) shall be also freed from the like country taxes forever: All and every of which premises we do ordain and enact to be fully established for law, any law, grant or usage to the contrary in any wise notwithstanding.”

But there is no evidence that the President and Fellows ever accepted this charter, or acted under it. They never assumed the name there designated of President, Fellows, and Treasurer of Harvard College, but acted under the name by which they were originally incorporated.

Thus stood the government of Harvard college as established by law until the colony charter was vacated in the year 1685. From this time to the granting of the provincial charter of William and Mary in the year 1691, no successful attempts were made to take away the property of the college or defeat its chartered rights, and it continued chiefly under the former corporation. The title of President of the college was changed to that of Rector, by Mr. Dudley, the president of the colony under king James II. The president of the colony, either with or without his council, sometimes interfered in the government of the college, probably claiming to be successors to the governor, deputy governor, and magistrates of the old colony of Massachusetts Bay.

The provincial charter of 1691 secured to the college its property, as is shown by the following extracts,

Extracts from the charter granted to the province of Massachusetts Bay, by King William and Queen Mary, bearing date the seventh of October, in the third year of their reign, Anno 1691.

“ Provided nevertheless, and we do for us, our heirs and successors, grant and ordain, that all and every such lands, tenements, hereditaments, and all other estates, which any person or persons, bodies politic or corporate, towns, villages, colleges, or schools, do hold and enjoy, or ought to hold and enjoy, within the bounds aforesaid, by, or under any grant or estate duly made, or granted by any general court formerly held, or by virtue of the letters patent herein before recited, or by any other lawful right or title whatsoever shall be, by such person and persons, bodies politic and corporate, towns, villages, colleges or schools, their respective heirs, successors and assigns, forever hereafter held and enjoyed, according to the intent and purport of such respective grant.—

—“ And we do further, for us, our heirs, and successors, give and grant to the said governor, and the great and general court of our said province or territory, or assembly, for the time being, full power and authority, from time to time, to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without, (so as the same be not repugnant or contrary to the laws of this our realm of England) as they shall judge to be for the good and welfare of our said province or territory, and for the government and ordering thereof, and of the people inhabiting, or who shall inhabit the same; and for the necessary support and defence of the government thereof.”

After the grant of the provincial charter, the friends of the college, desiring additional powers and privileges for the institution, and apprehensive of danger to it from the interference of the governor appointed by the king, made several attempts to obtain a new charter for the college. It is stated that three several acts of the legislature passed for that purpose, in which the board of overseers was omitted, and as a substitution therefor the number of the corporation was enlarged. But all these attempts proved abortive by the disapprobation of the king in council, grounded upon the proposed charter's not providing for a visitation of the king by his governor. To remove this objection, in the act sent over in

1697, passed under the administration of lieut. governor Stoughton, and in another said to be made in 1700, the governor and council were made visitors, but this was not satisfactory.

After the failure of these attempts, the friends of the college found it necessary to proceed pursuant to the powers, which had been exercised under the colony of Massachusetts Bay; and upon the election of President Leverett, a declaration of the provincial legislature was obtained, as follows.

Extract from a resolve of the Provincial General Court.

Anno Regni Annæ Reginae Sexto.

Thursday December 4th, 1707. In Council.

“ And inasmuch as the first foundation and establishment of that house, the corporation and the government thereof, had its original from an act of the general court, made and passed in the year 1650, which has not been repealed or nulled, the President and Fellows of said College are directed, from time to time, to regulate themselves according to the rules of the constitution, by the act prescribed, and to exercise the powers and authority thereby granted, for the government of that house and support thereof.

“ Saturday December 6th, 1707.

“ The representatives returned the vote, passed in council the 4th current, referring to the college, with their concurrence thereunto.—By his Excellency the Governor consented to,

“ JOSEPH DUDLEY.”

The governor, lieut. governor, and council assumed to be successors to the governor, deputy governor, and magistrates of the colony of Massachusetts Bay, and with the congregational ministers of the six towns originally designated, exercised the powers of overseers so long as the charter of William and Mary existed.

Under that charter no alteration was made by the provincial legislature in the government of the college, although one or two attempts for that purpose were made; but they were not consented to by the corporation, and were not carried into effect. The first attempt was in 1722 to enlarge the number of the corporation, so that the resident fellows or tutors might be included; which enlargement was applied for by the overseers. The other attempt was made soon after, in which it was proposed as a standing law

that some of the resident tutors should ex officio be fellows of the corporation. These proposed alterations were not agreed to by the corporation and were not sanctioned by the legislature.

During the existence of the provincial charter, one case only appears to have arisen, in which the overseers exercised original jurisdiction in removing a fellow and tutor from his place, not confining themselves to approving or annulling the proceedings of the corporation. The president and three of the tutors presented a complaint to the overseers against Nathan Prince, one of the tutors and also a fellow of the corporation, charging him with contemptuous and reproachful language respecting the president and others in the immediate government of the college; with neglect of his duty as a tutor, and with intemperance in drinking. Upon this complaint he was by the overseers removed from all the offices he held in the college, and the corporation were requested to fill up the vacancies occasioned by his removal. The causes of this singular procedure of the overseers will appear by the following vote of the corporation, passed when they agreed to supply the vacancies as requested, which is as follows.

At a meeting of the President and Fellows of Harvard college in Cambridge, by adjournment, April 27, 1742.

Present, The President,	Dr. Wigglesworth,
Mr. Flynt,	Mr. Appleton,
Dr. Sewall,	Mr. Treasurer.

“Whereas the Honorable and Reverend the Overseers of Harvard College did, upon the 18th day of February last past, vote the removal of Mr. Nathan Prince (one of the Fellows and Tutors of said College) from all office-relation thereto, on account of sundry crimes and misdemeanors whereof he was convicted before them, and which he had been charged with at said board, by some of the Corporation, as well as the Tutors of said College; and also did then recommend it to the Corporation to fill up the vacancies made by the said Mr. Prince’s removal: And although we apprehend that (according to the Constitution of said Harvard College) affairs of this nature ought to originate with the Corporation, yet in as much as, so many of the Corporation have been either complainants against the said Prince, or have been aspersed and maltreated by him, as that there is not left a majority of said Corporation, who may be thought by him, or by others (as we under-

stand) to be indifferent judges, in this affair; and inasmuch as we apprehend, that under all circumstances, it will not be for the interest and peace of the said college, that he should continue any longer in office therein, Therefore (saving all rights given to the corporation by their charter,) they passed the following votes:

"1. That Mr. Joseph Mayhew be a fellow of the corporation in the room of the said Mr. Prince.

"2. That Mr. Belcher Hancock be a tutor of said college in the room of the said Mr. Prince, and that for three years, and be the fourth tutor in order.

"3. That the two foregoing votes be presented to the Honourable and Reverend the Overseers, at their next meeting, for their approbation."

When the constitution of the commonwealth was formed, it was deemed expedient to give a constitutional confirmation of the government of the college. Afterwards the act of 1809, ch. 113,* passed the legislature providing for the amendment and alteration of the constitution of the board of overseers, with the consent of the overseers and corporation, which consent was afterwards given, and the board of overseers was organized, and exercised its powers pursuant to said statute.

The corporation being informed that in the winter session of the general court in 1812 a bill was pending for repealing the last statute, presented to the legislature a memorial, containing reasons against that repeal, which memorial here follows.

"To the Honourable the Senate and the Honourable the House of Representatives of the Commonwealth of Massachusetts, respectfully represent the President and Fellows of Harvard College, in behalf of the Corporation and Overseers of said College,

"That having learned, that a bill was pending before the honourable senate of this commonwealth, for the repeal of a statute, passed in March 1810,† establishing a board of overseers for the said college, your memorialists presented a memorial to the two houses, praying a postponement of the bill aforesaid, until the two boards, which constitute the college government, could have opportunity to be heard before the legislature, or a committee of

* Vide page 11.

† This statute is also called the act of the commonwealth Anno 1809, ch. 113, dating by the legislative year, from May to May.

the same, on this important subject. Since which, your memorialists have been informed, that the bill has passed the honourable senate, and is now pending before the honourable house of representatives. Though your memorialists have not been indulged with the notice and opportunity requested, yet they presume, that the honourable legislature will allow your memorialists, in the present stage of the proceedings, to offer such considerations and arguments, relating to the proposed act, as your memorialists may think their relation to the college, and the request of the overseers made for this purpose may require, and as the interesting nature of the subject may appear to them to justify. The following is a summary view of the facts and reasonings, which your memorialists beg leave to submit to the attention of the honourable legislature.

“ The overseers of Harvard college were originally constituted by an act of the general court of the old colony of Massachusetts, passed in 1642. By this act it is ordered, that the governor, deputy governor, and all the magistrates of the jurisdiction, with the president of the college, and the teaching elders of the six adjoining towns, Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, shall be overseers, with power to direct the government, and dispose and manage the property of the institution. Afterwards, in May 1650, the corporation was created, to consist of a president, five fellows, and a treasurer, and styled the President and Fellows of Harvard College. The charter declares, that the corporation shall have perpetual succession, by the election of members to supply vacancies ; the corporation procuring the presence, and having the counsel and consent of the overseers. The whole property and concerns of the college are committed to this corporation, subject, generally, to the control of the overseers. By an act passed October, one thousand six hundred and fifty seven, called an appendix to the college charter, certain powers were enlarged and explained. On the repeal of the charter of the colony attempts were also made to defeat all the chartered rights derived from it, but without success. By the province charter, granted 1691, the property of colleges, among other bodies politic, is confirmed to them. Of necessity, with respect to Harvard college, the corporation, holding the property of the college, is confirmed; and it appears, that the President and Fellows proceeded to exercise their powers as before the vacation of the colony charter. To prevent

however, any further question on these points, a resolution of the provincial legislature was passed in December, 1707, which recognized the continued existence of the corporation, as established by the charter of 1650, declaring that "said charter had never been repealed or nulled." It appears, that the royal governor and lieutenant governor, and the provincial council succeeded to the colonial governor, deputy governor, and magistrates of the colony, as overseers, with the congregational ministers of the six adjoining towns.

"Your memorialists conceive, that these are the legislative and public acts, on which the foundation and government of the college rest. The colonial general court passed an ordinance in October, 1672, now on the records of the court, providing for a new charter for the college, with very extensive and important powers, both civil and collegiate; and enacting that the provisions of that ordinance should be law, any law, grant, or usage, to the contrary notwithstanding. But, in fact, there remains no evidence that the corporation ever accepted this charter, or exercised any of the powers therein granted, and it is not on the records either of the overseers or corporation. The provincial legislature in 1692, and shortly afterwards, made some attempts to give a very ample establishment to the college, which were defeated by the negative of the king. But after all these attempts, the provincial legislature, in 1707, passed the resolution above-mentioned, that the former charter of the college of 1650 had not been repealed or nulled.

"Thus stood the government of the college and the power of visitation, until the state constitution was formed. This instrument recognized and confirmed the corporation as erected by its original charter, and designated the successors to the former overseers; a measure made necessary by the change of government in the state. The article appointing the overseers, is concluded with a proviso, that nothing therein declared 'shall be construed to prevent the legislature of the commonwealth from making alterations in the government of the university, conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late province of Massachusetts Bay.' It is believed, by your memorialists, that this proviso had particular respect to alterations, which, it was supposed, experience would prove necessary or expedient in the board of overseers.

“ In the year 1810, a statute was made, altering the constitution of the overseers, and appointing to that office the governor, lieutenant governor, and consellers, the president of the senate, the speaker of the house of representatives, and the president of the college, with fifteen laymen, and fifteen ministers of congregational churches, after the ministers who belonged to the board as before constituted should be reduced to this number; the succession of the thirty last mentioned members to be supplied, as vacancies shall happen, by the election of the board.

“ The corporation, in explaining the reasons of their assent to this statute, observe, ‘ they were sensible of the wisdom and good dispositions of that part of the former board, whose relation to it would cease by the new arrangement, and of the dignity derived to the university from their association; yet they were persuaded, that most important benefits would accrue to the seminary, from a body of overseers, coming not incidentally and casually to the duty; but chosen as vacancies should occur, with special reference to the object; and whose local situation and permanent connexion with the university would enable them to pay a prompt and uniform attention to its concerns. At the same time, by the plan proposed, the college would obtain this improvement, without ceasing to enjoy the singular distinction and benefit of an immediate alliance with the state, by means of its constituted authorities, having the supreme executive, and the presiding officers of the two houses always in the board.’ It cannot be denied that the members of the senate must necessarily, as a body, be under disadvantages for the efficient and regular discharge of many of the duties of overseers. Their connexion with the university depending on the contingency of an annual election, must, it is apprehended, have some effect to discourage a disposition to enter thoroughly, and systematically, into the affairs of the establishment. The distance of a large portion of the senate must prevent their attendance at meetings for college business, except during a session of the legislature; and then, it is frequently inconvenient, on account of the pressure of public business. For these reasons, it may, without any imputation on that honourable body, be admitted, that their sense of responsibility, as overseers, might be less than the intrinsic importance of the trust would seem to require, and their means of serving the institution unequal to their wishes.

“The inconveniences here mentioned, were certainly realized, in no inconsiderable degree, under the former constitution of the board; and in times, when no political prejudice or feeling could possibly bias the judgment, persons well acquainted with the subject, in and out of the senate, expressed a decided opinion in favour of a change in the constitution of the board of overseers, similar to that which was made in 1810. For whilst individuals of the former board had it in their power to give their attention to college concerns, the regular meetings of the board, and especially of the committees for inquiring into the state of the college, and particularly for examinations, were frequently so little attended by the gentlemen on the civil list, as to deduct very much from the good effect of these public occasions, on the minds of the students, and on the general interests of the institution. In these respects a manifest and important improvement has attended the change in the form of the board. The stated appearance of full committees, to observe the condition of the college, and to witness the exhibitions, and ascertain the proficiency of the scholars, has contributed to inspire the pupils with a laudable ambition, and to increase a sense of responsibility for the use of their advantages, whilst the governors and instructors have derived much assistance and encouragement from this portion of the academic body.

“As the expediency of this alteration seems manifest, so its compatibility with the rights of the respective boards, is, in the view of your memorialists, unquestionable. The legislature were careful to preserve the ancient foundation of the college unimpaired, and to prevent all ground for the apprehension, that the chartered privileges of the college are less sacred in the eyes of the present generation than they have been in those of our predecessors. They made this alteration in such a manner that the legal rights of the college could not be injuriously affected, for they annexed to the act the condition, that it should go into effect, when the provisions of it should be accepted by the two college-boards. It is a principle admitted, that a corporation may, with its consent, be altered by a legislature not specially or constitutionally restricted. For several reasons it was considered, that this principle must be applied in the present instance, and that without the consent of the boards, the alteration could not be made. It occurred, that, so far as the constitution is concerned, the powers of the college government rest on the same

foundation, and have the same authority as the powers of the legislature. This constitution reserves to the legislature so much control over the college government, as respects the overseers, as might have been exercised by the provincial legislature. In regard to the extent of this control, the provincial legislature, it is believed, could not make the alteration proposed without the assent of the existing college government, for the college was established by the same province charter, by which the legislature was created. The general court, deriving its authority from the provincial charter, could not legally control the rights of others derived from the same charter, since this would be to rescind a part of the charter, which was the very foundation of the legislative powers of the province, and to annul the very authority by which the general court existed. Further, the corporation is admitted, on all hands, to be confirmed by the said province charter. But the corporation, in the exercise of its powers, was subject to the control of a board of visitors, designated by the same authority by which it was created. To this control the said corporation must, of right, submit; and, without its own consent, to no other control whatever. To establish any other control over this body, would be an alteration of its power, to which no authority is competent, unless it can lawfully annihilate the corporation. These and other principles could not fail to be considered as fixing boundaries to the power of the provincial legislature over the college government. If even the rights of the college had not been confirmed by the charter of William and Mary, and if the corporation had been created by the general court, established by that charter, whose powers were not expressly limited by any declaration of rights, it could not then be admitted that the legislature of the late province of Massachusetts Bay could legally alter the powers of the corporation without its consent, unless it could be admitted that the same legislature could legally repeal its own grants, and annul the rights of any inhabitants derived from such grants.—The reasoning, to which the several views of the subject led, is confirmed by the practice of a century. The general court have confirmed and enlarged, but never impaired or abridged the powers of the college government. Whenever the question arose, they appear to have put the same construction upon their powers of alteration, which the legislature, who passed the statute of 1809, adopted: For example, in 1722, the overseers petitioned that the corporation might be ex-

larged; but the corporation not consenting, the house of representatives refused to grant the petition.* Attempts were afterwards made to persuade the general court to exercise the visitatorial power, and to interfere with the doings of the overseers, but without effect.

“ On these grounds the legislature were anxious, when in 1810 they purposed to give the college the benefit of an improved constitution of the board of overseers, to save all the chartered rights of the college. The former board, under the legislative sanction, divested themselves of their trust in favour of the present overseers. These overseers, it is believed, have succeeded to all the rights and powers which belonged to their predecessors in the same office; and hold these rights and powers by a permanent tenure, subject only to the implied condition of a faithful execution of the trust. The proviso in the third article of the fifth chapter of the constitution of the state, which reserves to the legislature the same power in respect to the government of the college, as pertained to the legislature of the late province, must in any interpretation include a power extending to such alterations in the board of overseers as should be made with the consent of both the college boards, on whom such alteration was to operate. Such consent having been provided for by the statute of 1809, and given by the said boards, the corporators created pursuant to said act have, as your memorialists believe, acquired rights, of which they cannot be deprived, but by their own consent, or by some legal process, founded on a charge of misbehaviour. But if it should be admitted that the legislature have authority by the constitution to make alterations without consent, yet this authority must extend to permanent as well as temporary alterations, and the statute of 1809, having made a permanent alteration, the legislature have exercised the powers reserved to them by the constitution of the state.

“ Your memorialists conceive that the present constitution of the board of overseers ought not to be considered as excluding the commonwealth from its just participation in the government of the university; since the commonwealth has an immediate relation to it by its constituted authorities, and is truly and virtually represented by the permanent overseers, who hold their place and trust under authority derived from the legislature. The legislature have not thought it any disparagement of the

* Records of the overseers, 1722.

rights of the public to erect other colleges, indebted like Harvard to the bounty of the state, with select and durable boards of trustees or visitors. They cannot be supposed willing to deny an institution, especially committed to their protection and patronage, means of improvement freely bestowed on other seminaries.

“Your memorialists are convinced that the university has been conducted with liberality and impartiality, and a steady view to the public good. In regard to the political divisions of the times, they believe that persons best acquainted with the course of instruction and discipline in that place will acquit the college of any attempts to prejudice or unduly excite the youthful mind. —Your memorialists rely on the wisdom and moderation of the legislature to arrest any measure that may involve the privileges or endanger the stability of an institution, vigilantly guarded and fondly cherished by all preceding generations, since its foundations were laid.

“In conclusion, your memorialists observe, that whilst they have deemed it necessary to be explicit in stating their views of the rights and interests of the college, they hope no part of this representation will be thought to militate with a due deference to that branch of the legislature particularly included in the consideration of this subject. The attachment of your memorialists to the present constitution of the board of overseers is founded on principles, which your memorialists believe consistent with an entire respect for the senate of this commonwealth. And your memorialists, as in duty bound, shall ever pray.”

This memorial was presented February 24, 1812.

The legislature however, without any reserve for the consent of the overseers and corporation, and in opposition to the preceding memorial, passed an act, a copy of which is subjoined.

An act to repeal an act, entitled, “An act to alter and amend the constitution of the Board of Overseers of Harvard College,” and to regulate certain meetings of that Board.

“Sect. 1. Be it enacted by the Senate and House of Representatives in general court assembled, and by the authority of the same, That an act made and passed the seventh day of March, in the year of our Lord one thousand eight hundred and ten, entitled, “An act to alter and amend the constitution of the Board of Overseers of Harvard College,” be, and the same is hereby repealed; and the Board of Overseers from and after the passage

of this act shall be constituted in the same way and manner, and be composed of the same persons, and no others, that it would have been, had the same act never been made or passed.

“ *Sect. 2.* Be it further enacted, That there shall be a meeting of the Board of Overseers of Harvard College, as the same will be constituted after the passing of this act, on the second Wednesday of the first session of the general court, annually, in the Senate Chamber, at three o’clock in the afternoon, unless otherwise ordered by the said Board of Overseers, if the general court shall remain so long in session ; and at such other times and places as the said Board shall order ; at which annual meeting it shall be the duty of the Secretary of said Board, at the first meeting thereof, to lay before them the records and proceedings of the Corporation of Harvard College, and of the said Board of Overseers, which have been had since the passing of the act aforesaid, which is hereby repealed, and in like manner all the proceedings which may have been had by said Corporation and Board of Overseers shall be laid before them, at their next succeeding meeting, to be held agreeably to the provisions of this act.

“ In the House of Representatives, February 28, 1812.

“ This bill, having had three several readings, passed to be enacted.

“ E. W. RIPLEY, *Speaker.*

“ In Senate, February 28, 1812.

“ This bill, having had two several readings, passed to be enacted.

“ SAMUEL DANA, *President.*

“ Council chamber, February 29, 1812.

“ Approved, E. GERRY.”

The legal effect of this act, unless it should be consented to by the government of the college, may be a question of future consideration.

The foregoing charters and acts relating to the constitution of Harvard College with the appendix are printed by vote of the corporation.

JOHN T. KIRKLAND, *President.*

Cambridge, April 18, 1812.

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ERRATUM.—Page 16, l. 7, dele 9, and l. 8 read 1638,9.

